

REMARKS

Applicants extend thanks to the Examiner for finding that Claim 17 recites allowable subject matter and is in condition for allowance. Applicants have amended Claim 15 in accordance with the Examiner's suggestion and submit that Claim 15 recites allowable subject matter and is also in condition for allowance.

Claims 1-53 are pending in this application. Claims 19-44 were withdrawn in response to a restriction requirement wherein Applicants elected Claims 1-18 and 45-53. Applicants reserve the right to file continuing applications directed to the non-elected claims, Claims 19-44.

Rejection based on Double Patenting

In paragraphs 2-5 of the pending Office Action, the Examiner rejected Claims 1, 2, 3, 4, and 6-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,573,986 to Smith ("Smith"). As noted by the Examiner, this rejection can be overcome with the filing of a terminal disclaimer if the conflicting patent is commonly owned with the pending application. The '986 patent to Smith is assigned to the Assignee of the pending application. In a previous filing on February 22, 2005 Applicants filed a Terminal Disclaimer that contained a typographical error identifying an incorrect patent number.

Applicants re-submit the accompanying, corrected, "Terminal Disclaimer" under 37 C.F.R. § 1.130(b) that disclaims the terminal part of the statutory term of any patent granted on the instant application which extends beyond the expiration date of the full statutory term of prior patent No. 6,573,986 as the term of the prior

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patent is defined in 35 U.S.C. §§154 and 173. Thus, Applicants respectfully submit that the Examiner's double patenting rejections are rendered moot.

Rejection of Claims 16 and 18 Under 35 U.S.C. § 112

In paragraphs 6-8 of the pending Office Action, the Examiner rejected Claims 16 and 18 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Examiner asserted that the term "higher order" in Claims 16 and 18 is a "relative term which renders the claim indefinite" and that "the specification does not provide a standard for ascertaining the requisite degree."

Applicants have amended Claims 16 and 18 to more particularly point out and distinctly claim the subject matter Applicants regards as the invention. Claims 16 and 18 have been amended to identify determining Zernike coefficients at an order a4 or above. Support for this amendment may be found at lines 7-17 of the application, where "higher order" Zernike coefficients are defined as orders a4 and higher.

Therefore, Applicants submit that Claims 16 and 18 are definite and are in condition for allowance.

Rejection of Claims Under 35 U.S.C. § 102

In paragraph 10 of the pending Office Action, the Examiner rejected Claims 1-14 and 45-53, under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication 2004/0233402 to Smith ("Smith"). In rejecting Claims 1-14 and 45-53, the Examiner asserted that Smith disclosed all the limitations recited in Claims 1-14 and 45-53.

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Applicants respectfully submit that the Smith publication does not qualify as prior art under 35 U.S.C. § 102(e). In relevant part, 35 U.S.C. § 102(e) states that one is entitled to a patent unless "the invention was described (1) in an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent." Applicants submit that Smith does not describe the invention and, while Smith was filed by another inventive entity, Smith was not filed before the invention by the present applicants for patent.

Smith was filed June 15, 2004 as a continuation of application No. 10/252,020 filed on September 20, 2002. The 10/252,020 application claimed priority to provisional application 60/323,571 filed September 20, 2001. Thus the earliest priority date to which Smith might be entitled is September 20, 2001.

The pending application filed on December 2, 2003 is a continuation-in-part of U.S. Application Serial No. 10/434,975 filed on May 9, 2003, which is a continuation of U.S. Application Serial No. 09/835,201 (now U.S. Patent No. 6,573,986 issued on June 3, 2003) filed on April 13, 2001, which claims priority from U.S. Provisional Application No. 60/254,271 filed on December 8, 2000.

It is noted that the priority claim for this application was specified in the inventor declarations filed on April 2, 2004 and a typographical correction to the priority claim in the specification was filed on September 20, 2004 in a Preliminary Amendment. The Examiner acknowledged receipt and entry of the September 20, 2004 Preliminary Amendment to the specification in a previous Office Action mailed October 19, 2004. Apparently, the Office records do not reflect the proper priority claim.

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Applicants submit that the pending application's claim of priority as from December 8, 2000 is earlier than Smith's earliest possible priority of September 20, 2001. Therefore, Smith was not filed before the invention of Applicants, and therefore Smith does not qualify as prior art under Section 102(e), and Claims 1-14 and 45-53 cannot be anticipated by Smith.

Applicants requests that the Office records be updated to reflect the correct priority claim for this application, as recited in the previously-entered Preliminary Amendment. Applicants also request issuance of an updated filing receipt.

Conclusion

Applicants respectfully submit that all the pending claims in the application, Claim 1-18, and 45-53, are in condition for allowance. Reconsideration and further examination of the application are requested. A Notice of Allowance is solicited.

Respectfully submitted,
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